

The real estate of an intestate devolves at once and entirely upon his heirs by the mere operation of law. But his personal property is, by the law itself, cast upon no one; nor does the legal ownership of it vest immediately in any person. Such a legal title can only vest in an administrator, who alone is considered as the legal representative of the intestate as to his chattels real and personal estate. In the interval between the death of the intestate and the granting of administration, the legal right to the personal property is in the keeping of the law. During that interval there is no one who can sue or be sued for it; so that a person who had, after the death of the intestate, obtained possession of his personal property, could not have it quieted or matured into a right by the lapse of any length of time, even as much as forty years uninterrupted possession, before the granting of letters of administration; because, the statute of limitations could not be allowed to operate at all until the legal title was vested in some one; and there was a person lawfully clothed with a capacity to sue for, hold and dispose of such property. (*f*)

Our statute of distributions, like that of England, (*g*) directs the goods, chattels, and credits of those who die intestate, to be committed to an administrator whose powers and duties are prescribed. He has a vested interest in the personal estate of the deceased, (*h*) and is directed to collect and take the whole of it into his possession; which, or the proceeds of the sales thereof, he is, in the first place, to apply to the satisfaction of all the debts due from the intestate; and then, he is to distribute the surplus among the next of kin of the deceased. Although the creditors of the deceased are to be first provided for under this statute, yet the next of kin, among whom the surplus is to be distributed, take an interest which vests in them, by operation of law immediately. It is considered as a species of *chose in action* of an indefinite value; in nature of a present debt, payable at a future day. (*i*) This interest vests in those who are the next of kin of the deceased at the time of his death; not, however, in exclusion of a posthumous

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(*f*) *Stanford's case*, Cro. Jac. 61; *Jolliffe v. Pitt*, 2 Vern. 695; *Cary v. Stephenson*, 2 Salk. 421; *Murray v. The East India Company*, 7 Com. Law Rep. 67; *Fishwick v. Sewell*, 4 H. & J. 394; *Haslett v. Glenn*, 7 H. & J. 17.—(*g*) Bac. Abr. tit. *Executors and Administrators*, I.—(*h*) *Blackborough v. Davis*, 1 P. Will. 42.—(*i*) *Browne v. Shore*, 1 Show. 2 and 25; *Palmer v. Allicock*, 2 Show. 407; S. C. 3 Mod. 59; *Squib v. Wyn*, 1 P. Will. 380; *Palmer v. Garrard*, Prece. Chan. 21; *Doran v. Simpson*, 4 Ves. 665.